Supreme Court, U. S.
FILED
JUN 28 1974
MICHAEL RODAK, JR., CLERK

APPENDIX

IN THE
Supreme Court of the United States
OCTOBER TERM, 1973

No. 73-1245

UNITED STATES OF AMERICA, ET AL.,
Petitioners,

—v.—

RICHARD V. BISCEGLIA

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

PETITION FOR CERTIORARI FILED FEBRUARY 13, 1974
CERTIORARI GRANTED APRIL 15, 1974

IN THE

Supreme Court of the United States

OCTOBER TERM, 1973

No. 73-1245

UNITED STATES OF AMERICA, ET AL.,
Petitioners,

—v.—

RICHARD V. BISCEGLIA

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

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GENERAL DOCKET

UNITED STATES COURT OF APPEALS

FOR THE SIXTH CIRCUIT

Case No. 72-1783

Appeal From Eastern District of Kentucky, at London

UNITED STATES OF AMERICA AND B. L. BRUTSCHER, SPECIAL AGENT, INTERNAL REVENUE SERVICE,
PETITIONERS-APPELLEES

VS

RICHARD V. BISCEGLIA, AS VICE PRESIDENT OF THE COMMERCIAL BANK, MIDDLESBORO, KENTUCKY,
RESPONDENT-APPELLANT

(Internal Rev. Summons)

NO. BELOW: 1996 Civil

JUDGE BELOW: Moynahan

DATE OF JUDGMENT: June 1, 1972

NOTICE OF APPEAL FILED: June 30, 1972

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Date	Account of Appellant	Received	Disbursed	Remarks
8/9/72	William A. Watson	25.00		
8/21/72	Treasurer of U.S.-Acc't Fees Earned		25.00	

GENERAL DOCKET

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

Case No. 72-1783

Date	FILINGS—PROCEEDINGS
1972	
Jul. 3	Copy of Notice of Appeal
Aug. 9	*Certified record* (1 vol. of pleadings and transcript), filed; and cause docketed
" 10	Alternative motion by appellant for leave to dispense with an appendix or to permit filing of deferred appendix pursuant to Rule 30(c)
" 15	Appearance of counsel for Appellees
" 15	Appearance of counsel for Appellant
" 25	Ruling on motion of 8/10/72—Motion to dispense with appendix denied, motion to defer filing appendix granted—Peck, J.
Sep. 18	Appellant's designation of record for appendix
" 18	One typewritten copy of Brief for Appellant, with proof of service
Oct. 26	One typewritten copy of Brief for Appellees
" 26	Proof of service of brief for Appellees
Nov. 10	Twenty-five copies of Brief for Appellant
" 10	Ten copies of Appendix for Appellant
" 10	Proof of service of brief and appendix for Appellant
" 10	Twenty-five copies of Reply Brief for Appellant
" 10	Proof of service of reply brief for Appellant
" 22	Twenty-five copies of Brief for Appellees, with proof of service

Date	FILINGS—PROCEEDINGS
1973	
Feb. 2	Cause argued and submitted (Before: McCree, Lively and Kennedy, JJ.) W-114
Oct. 18	Judgment of the District Court reversed and the case is remanded with instructions to deny enforcement of the summons AA-2
" 18	Opinion by McCree, J.
Nov. 1	Twenty-five copies of Petition for Rehearing, with proof of service
" 16	Order denying petition for rehearing (McCree, Lively and Kennedy, JJ.) AA-4
" 29	Mandate issued (Costs to be recovered by Appellant—$25.00 filing fee)
	Opinion with mandate
Feb. 19	Notice of filing petition for certiorari on 2/13/74 (Sup. Ct. 73-1245)
Apr. 22	Certified copy of order granting certiorari on 4/15/74

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF KENTUCKY AT LONDON

Civil Action No. 1996

UNITED STATES OF AMERICA AND B. L. BRUTSCHER, SPECIAL AGENT, INTERNAL REVENUE SERVICE, PETITIONERS

v.

RICHARD V. BISCEGLIA, AS VICE PRESIDENT OF THE COMMERCIAL BANK, MIDDLESBORO, KY., RESPONDENT

PETITION TO ENFORCE INTERNAL REVENUE SUMMONS—Filed Aug. 4, 1971

Now comes the United States of America and Special Agent B. L. Brutscher, Internal Revenue Service, by their attorney, Eugene E. Siler, Jr., United States Attorney for the Eastern District of Kentucky, and respectfully show unto this Court as follows:

I

This is a proceeding brought under the authority of Sections 7402(b) and 7604(a) of the Internal Revenue Code of 1954, 26 U.S.C., Sections 7402(b) and 7604(a) (1964), to judicially enforce an Internal Revenue summons.

II

The petitioner, B. L. Brutscher, is a special agent of the Internal Revenue Service and is authorized to issue Internal Revenue summonses under the authority of Section 7602 of the Internal Revenue Code of 1954, 26 U.S.C., Section 7602 (1964), and Treasury Regulation,

Section 301.7602-1, 26 C.F.R., Section 301.7602-1 (TD 6421, Oct. 23, 1959 and TD 6498, Oct. 24, 1960).

III

The respondent, Richard V. Bisceglia, as Vice President of the Commercial Bank, may be located at said bank in Middlesboro, Kentucky, within the jurisdiction of this Court.

IV

The petitioner, Special Agent B. L. Brutscher, is conducting an investigation to determine the identity of a person or persons who, using "thin and brittle" (abnormal-deteriorating) one hundred dollar bills, made deposits totalling $20,000, sometime between October 22, 1970, and November 13, 1970, at the Commercial Bank; upon the determination of said person or persons' identity, he has been assigned to determine said person's or persons' tax liabilities, if any, for the year 1970.

V

The respondent, Richard V. Bisceglia, as Vice President of the Commercial Bank, is in possession and control of various bank books, records, and testimony of employees which will provide information as to the above-referred to person or persons.

VI

On April 22, 1971, a summons, Treasury Form 2039, was issued by the petitioner, Special Agent B. L. Brutscher, directing the respondent, Richard V. Bisceglia, as Vice President of the Commercial Bank, to appear before the petitioner, B. L. Brutscher, on May 3, 1971, at 9:00 a.m., to testify and to produce bank records relating to the tax investigation described in paragraph IV, all as more fully set out in the attached Affidavit and Summons. An attested copy of the summons was served upon the respondent, Richard V. Bisceglia, by the petitioner, B. L. Brutscher, on April 22, 1971, by handing it to Mr. Bisceglia. The summons issued to Mr. Bisceglia,

as Vice President of the Commercial Bank, is attached hereto and incorporated herein as Exhibit 1.

VII

The respondent, Richard V. Bisceglia, as Vice President of the Commercial Bank, failed and refused to comply with the terms of the summons described in paragraph VI, and such failure and refusal has continued to the date of this petition.

VIII

It was and now is essential to a determination of the identity of the person or persons described in paragraph IV and to his or their tax liabilities, if any, for the calendar year 1970, that the respondent, Richard V. Bisceglia, as Vice President of the Commercial Bank, be required to testify (or produce bank employees to give testimony) and produce the specific bank records demanded, as is evidenced by the Affidavit of the petitioner, Special Agent B. L. Brutscher, Internal Revenue Service, attached hereto and incorporated herein as part of this petition.

Wherefore, the petitioners respectfully pray:

1. That this Court enter an order directing the respondent, Richard V. Bisceglia, as Vice President of the Commercial Bank, to show cause, if any he has, why he should not comply with and obey the aforementioned summons and each and every requirement thereof.

2. That the Court enter an order directing the respondent, Richard V. Bisceglia, to obey the aforementioned summons and each and every requirement thereof, and ordering his attendance and testimony and production of the bank records demanded, as required and called for by the terms of the summons, before Special Agent B. L. Brutscher, or any other proper officer of the Internal Revenue Service, at such time and place as may hereafter be fixed by Special Agent Brutscher, or any other proper officer of the Internal Revenue Service.

3. That the United States recover its costs in maintaining this action.

4. That the Court enter such other and further relief as is just and proper.

By /s/ JOHN M. COMPTON
Assistant United States Attorney

EXHIBIT 1 TO PETITION

SUMMONS

In the matter of the tax liability of

John Doe

Internal Revenue District of Louisville

Period(s) 1970

The Commissioner of Internal Revenue

To Richard V. Bisceglia, Executive Vice President, Commercial Bank

At Middlesboro, Kentucky

Greetings: You are hereby summoned and required to appear before B. L. Brutscher, an officer of the Internal Revenue Service, to give testimony relating to the tax liability or the collection of the tax liability of the above named person for the period(s) designated and to bring with you and produce for examination the following books, records, and papers at the place and time hereinafter set forth;

"Those books and records which will provide information as to the person(s) or firm(s) which deposited, redeemed or otherwise gave to the Commercial Bank $100 bills U. S. Currency which the Commercial Bank sent in two shipments of (200) two hundred each $100 bills to the Cincinnati Branch of the Federal Reserve Bank on or about November 6, 1970 and November 16, 1970."

Place and time for appearance:

at Your Office

on the 3rd day of May, 1971 at 9:00 o'clock A.M.

Failure to comply with this summons will render you liable to proceedings in the district court of the United States or before a United States commissioner or magistrate to enforce obedience of the requirements of this summons, and to punish default or disobedience.

Issued under the authority of the Internal Revenue Code this 22nd day of April, 1971.

Original

/s/ B. L. BRUTSCHER
Special Agent

AFFIDAVIT—Filed Aug. 4, 1971
(Attached to Petition)

B. L. Brutscher, a petitioner herein, being first duly sworn, deposes and says:

1. That I am a duly commissioned special agent of the Internal Revenue Service performing my duties under the District Director of Internal Revenue, Louisville, Kentucky.

2. That in my capacity as a special agent I was assigned to determine the identity of a person or persons who, using "thin and brittle" (abnormal-deteriorating) $100 bills sometime between October 22, 1970 and November 13, 1970, made deposits totaling $20,000 at the Commercial Bank; further, I have been assigned to determine, upon identification, said person's or persons' tax liabilities, if any, for the year 1970.

3. That pursuant to such investigation and in accordance with Sections 7602 and 7603 of the Internal Revenue Code of 1954, I personally served a summons, Treasury Form 2039, upon Richard V. Bisceglia, as Vice President of the Commercial Bank, on April 22, 1971. A true copy of the summons, attached as Exhibit

1 to this application and made a part hereof, directed Richard V. Bisceglia to appear before me on May 3, 1971 at 9:00 A.M. at the Commercial Bank, Middlesboro, Kentucky, then and there to give testimony (or produce bank employees to give testimony) and produce specific bank records in aid of the above-described investigation of the tax liabilities, if any, of the person or persons designated as "John Doe" in the summons.

4. That Richard V. Bisceglia, as Vice President of the Commercial Bank, failed and refused to testify (or produce bank employees to testify), and further failed and refused to produce the specific bank records demanded and such failure and refusal continues to the date of this affidavit.

5. That the testimony and specific bank records demanded by the summons served upon Richard V. Bisceglia are necessary for the determination of the tax liabilities of said unidentified person or persons.

Further your affiant saith not except that this affidavit is in support of a petition to enforce an Internal Revenue summons issued by the Commissioner of Internal Revenue to Richard V. Bisceglia, as Vice President of the Commercial Bank.

/s/ B. L. BRUTSCHER
Special Agent

Sworn to and subscribed before me this 4th day of August, 1971.

/s/ BRENDA L. PREWITT
Notary Public

My commission expires: May 12, 1972.

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF KENTUCKY AT LONDON

ORDER TO SHOW CAUSE—Filed Aug. 9, 1971

[Caption omitted]

Upon the petition, the exhibit attached thereto, the affidavit of Special Agent B. L. Brutscher, Internal Revenue Service, and upon motion of Eugene E. Siler, Jr., United States Attorney, it is

Ordered that Richard V. Bisceglia, as Vice President of the Commercial Bank, appear before the United States District Court for the Eastern District of Kentucky in that branch thereof presided over by the undersigned on the 13th day of September, 1971, at 9:00 A.M. to show cause why he should not be compelled to obey the Internal Revenue summons served upon him on April 22, 1971. It is further

Ordered that a copy of this order, together with the petition and exhibit thereto, be served personally upon Richard V. Bisceglia at least 20 days prior to the time set herein for hearing.

Dated at Lexington Kentucky, this 6th day of August, 1971.

/s/ BERNARD T. MONAHAN, JR.
Judge

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF KENTUCKY AT LONDON

ANSWER—Filed Aug. 18, 1971

[Caption omitted]

Comes now Richard V. Bisceglia, the respondent named above, by counsel, and for his answer to the petition filed herein states as follows, to-wit:

1. He denies the allegations contained in paragraph I of the petition on the ground that inasmuch as the Special Agent who issued the summons in question has proceeded without authority under the statutes to issue the same, he is likewise without authority under the statutes identified in paragraph I to enforce that summons under the statutes cited.

2. He admits that petitioner is a Special Agent authorized to issue Internal Revenue summonses under Section 7602 of the Internal Revenue Code of 1954 and under the Treasury Regulations cited, but denies that such authority existed under the circumstances prevailing in this case.

3. He admits the allegations contained in paragraph III of the petition.

4. He admits that Special Agent Brutscher is conducting an investigation to determine the identity of person or persons who made deposits in Commercial Bank totalling $20,000 sometime between October 22, 1970, and November 13, 1970, but he has no knowledge as to whether such cash deposits were "thin and brittle" (abnormal-deteriorating) one hundred dollar bills, and the allegations to that effect contained in paragraph IV are therefore denied and strict proof thereof is demanded; the respondent has no knowledge of whether petitioner, upon the determination of the identity of the person or persons making such a deposit, if any such single deposit was made, has been assigned to determine the liability of the person or persons making such deposit for 1970 income taxes and, therefore, that allegation of paragraph IV of the petition is denied and strict proof thereof is demanded.

5. The respondent admits that he is in possession and control of the bank books and records which probably will show the origin of any cash deposits made during the period in question, but he is not in possession of testimony of employees, and this part of paragraph V is denied.

6. The allegations contained in paragraph VI are admitted to be true.

7. The allegations contained in paragraph VII are admitted to be true.

8. The allegations contained in paragraph VIII are not known by the respondent to be true, wherefore the same are denied and strict proof thereof is demanded.

FIRST AFFIRMATIVE DEFENSE

The respondent avers that the petitioner has failed to state in the summons which he now seeks to enforce, or in this petition, the name of any particular taxpayer concerning whom his investigation is oriented. The issue of the summons, and the tenor of the petition filed seeking its enforcement, is that because a large sum of money was deposited in the bank during the period of time mentioned in the petition, and later sent by the bank to the Federal Reserve Bank at Cincinnati, Ohio (which is the source of the IRS information concerning this money), there may be a taxpayer who is liable for some income tax for the year 1970. Special Agent Brutscher wants to know who the depositor of this sum of money was, if it was done in a single deposit, so he can look into this taxpayer's affairs, but he doesn't know the name of the taxpayer. We may suspect that Special Agent Brutscher or his superiors suspect fraud on the part of the depositor of this large sum or sums of money, since he is primarily involved with criminal investigations, but for the purpose of this proceeding he is taking the position that he is only interested in determining the tax liability for the year of 1970 of the person or persons who put this sum of money in the bank. The money may not have been deposited actually but could have been turned in for

newer bills or different denominations. In any event, the summons does not comply with the requirements of Section 7602 of Title 26, United States Code, since it is implicit in the language of that section that the inquiry must be related to the affairs of a particular person and the summons may not be used for a fishing expedition. Under the circumstances, therefore, the summons represents an exploratory operation on the part of the agent and on that basis it is not justified by the statute and is unreasonable under the circumstances. For the same reason, it constitutes an unlawful search and seizure.

SECOND AFFIRMATIVE DEFENSE

The inquiry being made by Special Agent Brutscher, in view of his capacity as an employee of the Intelligence Division of the Internal Revenue Service, whose primary investigative responsibility is criminal matters, must be considered to have strong overtones of a criminal investigation, and the statute does not authorize the use of the summons provided in Section 7602 under these circumstances, or where the inquiry has dominant criminal overtones. Were it otherwise, there would be no reason for a Special Agent in the Intelligence Division to conduct this investigation.

THIRD AFFIRMATIVE DEFENSE

Any taxpayer whose records are sought to be produced by the summons authorized by Section 7602 has the right to challenge the enforcement of the summons. Hence, under the circumstances in this case, where no particular taxpayer's records are sought, but all taxpayers who do business with this bank in any way may be affected by the inquiry, all such taxpayers who have records at the bank or who had had transactions with the bank involving cash are denied the right to challenge the enforcibility of the summons, since the summons is not directed at any specific taxpayer. It would be impossible and impractical for the bank to notify every single taxpayer who had some transaction with the bank during the period in question of the pending inquiry and the use of the summons concerning bank records so that these people, who would number literally in the hundreds, could be notified of their right to appear and challenge the enforcement of this particular summons.

FOURTH AFFIRMATIVE DEFENSE

The petitioner has not acted in good faith under the circumstances which prevail in this case and his action amounts to a clear abuse of the procedures described in Section 7602 of the Internal Revenue Code of 1954.

Wherefore, Richard V. Bisceglia, having answered the petition filed herein, prays that his refusal to honor the summons served upon him on April 22, 1971, be affirmed by this Court as proper under the circumstances and that he not be required to honor that summons, that the petition herein be dismissed and held for naught, and for all other proper relief to which he may be entitled at law or in equity.

By /s/ William A. Watson
Watson & Watson
Attorneys at Law
1911½ Cumberland Avenue
Middlesboro, Kentucky 40965
Attorneys for Respondent

PETITIONERS' TRIAL EXHIBIT 1

REPORT OF CURRENCY TRANSACTIONS

See Reverse for Instructions

Part A. Person or Organization Concerned in Transactions Reported

Name Commercial Bank
Address Middlesboro, Kentucky
Business, profession, or occupation .....

Part B. Description of Transactions

Date	U. S. Currency Involved: Total amount	U. S. Currency Involved: Amount in denominations of $100 or higher	Nature of Transactions (State whether deposit, withdrawal exchange of currency, cashing or purchase of check, etc.)
11/ 6/70	$54,600.	$20,000 in 100's)	Hundreds in deteriorated condition, apparently from long period of storage.
11/16/70	69,000.	20,000 in 100's)	

Additional information .....

Part C. Financial Institution Reporting

Name Cincinnati Branch
Address Federal Reserve Bank
Cincinnati, Ohio 45201

(Stamp)

District Director of Internal Revenue
Cincinnati

Received
Dec. 24, 1970
Intelligence Division

[Caption Omitted]

TRANSCRIPT OF PROCEEDINGS

(September 13, 1971)

• • • •

[8]

• • • •

[Testimony of David Weisbrod]

DIRECT EXAMINATION

BY MR. SNOW:

Q. Sir, state your name to the Court and please spell the last name for the reporter.
A. David Weisbrod, W-e-i-s-b-r-o-d.
Q. What is your residence address, sir?
A. 553 Starling Court, Cincinnati, Ohio.
Q. Sir, how are you employed at this time?
A. The Cincinnati Branch, Federal Reserve Bank of Cleveland.
Q. What is your job title?
A. I am Manager of the Cash Department.
Q. And how long have you been the Manager of the Cash Department?
A. Since September of 1967.
[9] Q. And were you employed by the Federal Reserve Bank before that time?
A. I have been employed since February 2nd, 1946.
Q. And, sir, in your present job title what are your duties, briefly?
A. Well, the operations of currency payments and receipts to commercial banks in the Fourth Federal Reserve District and this encompasses approximately fifty people that I would have working in various capacities which I directly supervise.
Q. Approximately, sir, how many member banks are there?
A. In the Cincinnati branch?
Q. Yes, sir.

A. Right off the top of my head I would say in the neighborhood of 200.

Q. Was the Commercial Bank of Middlesboro one of these members?

A. They are a non-member bank. They are not a member of the Federal Reserve System.

Q. Have you had dealings, however, with the Commercial Bank?

A. Yes, sir, we have received deposits from them and we have made shipments to them.

[10] Q. Now, sir, directing your attention to November 6th and November 16, 1970, did you have any dealings with the Commercial Bank of Middlesboro?

A. We did on both occasions receive currency deposits from this non-member bank for credit to a member bank.

Q. I see. And taking November 6th, 1970 did your bank have occasion to receive $20,000 in $100 bills among other deposits from the Commercial Bank?

A. Well, the $20,000 was part of a deposit made by Commercial Bank of Middlesboro on November 6th, and then again on the 16th.

Q. You received an additional $20,000 in $100 bills from the Commercial Bank?

A. Right.

Q. What, if anything, did you notice about this particular shipment?

A. The $100 bills that were received, many of them, were in a deteriorated condition, which it is rather unusual to receive this quantity in this condition.

Q. Well, when you say deteriorated, sir, what do you mean?

A. Well, they were tissue paper thin; they were very difficult to count, and had had some unusual weathering or some climatic effects, I would assume, that [11] would cause it.

MR. WATSON: I object to his conclusions, Your Honor.

MR. SNOW: He's an expert, Your Honor. He's been with the Federal Reserve Bank since 1946.

THE COURT: Well, objection was made, the objection is sustained unless you show his qualifications in

determining the deteriorated condition of money. He could have been up there in an office and seen no money.

MR. SNOW: Well—

THE COURT: I assume that you can show that, but we can't speculate about it.

MR. SNOW: Yes, sir.

THE COURT: All right.

Q. Before we get into that, sir, what, if anything, happened to these two particular shipments?

A. Well, when I was informed that we had received currency that was in bad condition, I personally [12] examined it and I brought it to the attention of my immediate superior, Howard E. Taylor, who is now deceased, and he suggested that this TCR-1 form be prepared.

THE COURT: Let me ask you a question. What denominations was it in?

A. These were all $100 bills.

THE COURT: $100 bills—all right.

Q. I'm going to show you—

THE COURT: Mr. Marshal—the Marshal carries the exhibits.

MR. SNOW: Excuse me, Your Honor.

Have it marked for identification, Mr. Marshal. The attorney has a copy of this already. It is attached to our memorandum.

(Reporter's note: At this time a copy of the TCR-1 form above referred to is marked for identification purposes only as Exhibit Number 1 for the United States).

MR. SNOW: Mr. Marshal, will you show that to the [13] witness, please.

(Reporter's note: At this time Exhibit Number 1 marked for identification is handed to the witness).

Q. Now, Mr. Weisbrod, is that a true copy of the TCR which you caused to be prepared?

A. Yes, sir.

Q. It is?

A. Yes.

MR. SNOW: Then, without objection, I would move that this be marked into evidence, Your Honor.

THE COURT: Any objection?

MR. WATSON: No objection, Your Honor.

THE COURT: All right, let it be filed.

(Reporter's note: The form above mentioned is filed herewith and made part of the record herein, and will be found as a part of the Clerk's record, marked Government's Exhibit Number 1.)

Q. Now, Mr. Weisbrod, you have been there since 1946, how many bills does that bank deal with daily?

[14] A. Daily, there's a great deal of inconsistency. Let's say during the year 1970 that my department received and processed 96 Million pieces of currency.

Q. 96 Million?

A. Yes.

Q. And does your department ever have occasion to notice substantial amounts of what does not seem to them to be, or to you to be, normal paper?

A. Well, generally there would not be a large quantity of currency received in the manner or condition in which this currency was. You may run across a few bills here and there that may be in such deteriorated condition, but no accumulation of them. To the best of my knowledge, there was only one parallel situation and that was several years ago where a large hoard of money was found that was in comparable condition. It was stored in milk cans that were buried in concrete.

Q. Well, now, sir, when you receive shipments of money from banks do you assort this money?

A. We sort the currency to determine fitness; the unfit is removed for redemption, and also there is inspection for counterfeits, and so on, by the various people handling the money.

Q. Now, sir, what is your theory for determining if money is unfit?

[15] A. The condition of the money is determined by the Treasury Department circular which generally would be—it cannot be limp; it has to have some of the sizing and must not be offensively marked or excessively

dirty, and it must have the feel and the sizing in the paper.

Q. And this test was applied to the money in question, I presume?

A. This money in question was tissue paper thin and would not qualify as fit currency. It definitely was unfit currency.

Q. This is your opinion?

A. Right.

Q. Based on your job training?

A. Yes.

Q. Now, sir, when you received it from the Commercial Bank would you state whether or not there was any difficulty in sorting this particular, or these two particular shipments?

A. Well, as part of our internal operation any 50's or 100's that are received by our bank are counted immediately in the receiving cage by the two tellers that receive the currency—well, that stands to be corrected: One of the two tellers must verify the currency. The fellow that did verify some of this money was making the remark to me that he had experienced a rather difficult time in [16] that the bills were—because they were so thin and in deteriorated condition he had a hard time getting them apart in that he had to count it several times in order to come up with the correct amount that was under the strap.

Q. You say "under the strap", who puts the listing under the strap, is that the Commercial Bank?

A. The Commercial Bank would strap the currency and usually stamp their name on it per the operating or governing—

Q. And you must check that and see if that is correct?

A. Well, we do verify the count to make sure the dollar amount would correspond with the amount shown on the strap.

Q. Now, sir, if this money was not fit for additional use, what happened to it—was it destroyed?

A. Well, as part of the normal operations after it is received in a receiving cage it is turned over—well, 50's and 100's would be turned over directly to the

assorting division and it would be held until such time as it would be subsequently re-verified, again inspected for counterfeits and sorted out to district for the unfit, and as far as fit currency, it is sorted into the category of fit, and then it ultimately is destroyed by incineration in our office.

[17] Q. And this is what happened in this case?

A. Right.

Q. No, sir—

THE COURT: You mean, this currency has been destroyed?

A. Yes, sir, we held this for a period of time and it has subsequently been destroyed. We had not been ordered to hold it, or anything else. We did call the Secret Service—this I'm not certain of—let's say, my superior at that time, I know, contacted someone, whether it was Secret Service or whether it was IRS, this I do not know.

THE COURT: What did they want to burn up the evidence for, or destroy it? Well, you don't have to answer it. I can't think of any sensible answer to that. What about it, Mr. Snow, is it gone?

MR. SNOW: Well, sir, I think the best man to answer that is Agent Brutscher whom I will call as the next witness.

THE COURT: There may be some reason for it, but I— [18] all right, go ahead. I would like to have seen what it looked like.

Q. Now, sir, can you tell me previous to November 6th, 1970 what was the last previous time Commercial Bank send you a shipment?

A. Well, I have here all our deposit forms for the year 1970 and—

• • • •

[20]

• • • •

BY MR. SNOW:

Q. Mr. Weisbrod, you have already indicated to the Court that you have been employed by the Federal Reserve Bank in Cincinnati since 1946. Directing your

attention to the years 1965 and 1966 what was your job title?

A. I was the Supervisor of Currency Section, which required that I physically handle all the money that came in through the Bank or was processed by our bank other than for the periods where I may be rotated out in conjunction with the bank's requirement of rotation.

Q. Now, sir, if there was any money that was in deteriorated condition you would be in position to see this money, would you not?

A. What was this question again?

Q. If there was any money, sir, that was in deteriorated condition in the judgment of the people in your section, would you have had occasion to have seen this money?

A. Right. Any money that would be unusual, or possibly require special handling, it would have been brought to my attention.

[21] Q. Possible counterfeit?

A. Counterfeit, and things of this nature, yes.

Q. And you testified earlier that the previous year you were responsible for approximately 96 million dollars in bills?

A. 96 million pieces, which could have been in excess of 800 Million Dollars.

• • • •

[22]

• • • •

Q. Do you sir, in your present job make a determination—are you responsible for a determination as to whether money should be placed back into use?

A. I would assume to some degree this may be true through the people that I am working with, or my subordinates, to where we may determine the type of money that is fit and unfit.

Q. Did you make such a determination with regard to the $40,000 in $100 bills in this case?

A. Right.

Q. And what was the determination—that it should be placed back into use?

[23] A. No, that it was unfit for further circulation because of the deteriorated condition of the money.

Q. How long have you been in this particular capacity where you could make this determination?

A. On and off since 1955.

Q. No, sir, you already testified that there were two deposits made by the Commercial Bank pertaining to the money involved on the 6th of November and on the 16th of November. Could you indicate to the Court the last date of the previous deposit made by the Commercial Bank with the Federal Reserve Bank—that is, prior to November 6th?

A. According to the bank records, it would have been their shipment of October 22nd, which we received on October 23rd.

Q. And did the bank at that time turn in any $100 bills?

A. No, sir.

Q. Now, you have gone over your records at my request, sir, and I have asked you to examine for the whole year of 1970 up to and including November 6th the total amount of $100 bills which the Commercial Bank sent to the Federal Reserve Bank. Did you determine that amount?

MR. WATSON: Objection.

[24] A. This was $21,800.00.

THE COURT: The objection is overruled.

Q. In other words, prior to the $40,000 we're talking about, there was $21,800?

A. Right.

Q. And generally speaking in what segments would this be turned over to the bank?

A. There were four separate deposits that contained $5,000 each, and one deposit that contained $1800 and these were $100 bills.

MR. WATSON: Your Honor, let me object on the basis if I understand counsel's purpose here, it is not to show the denomination of the bills received, but the condition.

THE COURT: Wouldn't he be entitled to show that this was an unusual amount of $100 bills for them to

send in? I'm thinking that that's probably what he's driving at.

MR. WATSON: That might be what he's driving at. I don't think it is relevant.

THE COURT: All right, overruled.

[25] Q. Sir, in this previous $21,800 did you notice any, as you say, deterioration in these bills?

A. I would assume the bank sent these in as unfit currency. There was nothing unusual with this currency—that is, out of the ordinary of what we would normally receive from any bank, and, therefore, none of these were brought to my attention.

Q. Something is only brought to your attention when it is thought to be unusual?

A. Right.

Q. No, sir, it is understood by all of us here that this particular $40,000 has been destroyed. Can you give the Court an idea of about when it was destroyed?

A. I would say approximately some time during the month of December, 1970.

Q. Can you also indicate to the Court whether or not you made any actual telephonic contact, personal contact, with the Internal Revenue Service before destroying it?

A. I know of none personally. I don't know what Mr. Taylor may have done, who was my immediate superior.

Q. Personally speaking, do you know whether or not any other Governmental agency was contacted?

A. To the best of my knowledge, I believe they [26] did contact Secret Service. I did not personally.

MR. SNOW: No further questions, Your Honor, of this witness.

THE COURT: Cross examine.

CROSS EXAMINATION

BY MR. WATSON:

Q. Mr. Weisbrod, is that correct?

A. Yes, sir.

Q. You didn't open the shipment of money from the Commercial Bank?

A. No, all the money as it is received is opened and verified by two tellers working under dual control in the presence and view of each other, and, as I stated before, it is their responsibility to verify, on receipt, any $50 or $100 bills that they receive, and they are the ones that initially brought this to my attention, not immediately, but later on.

Q. And only these two sums of money was brought to you—not the entire shipment from the bank?

A. No, the $100 bills were the only ones—the only bills that were in this bad deteriorated condition, and, therefore, nothing else was unusual as far as the deposit.

[27] Q. Do you remember how much was in each deposit other than this money you're talking about.

A. I can tell you here, if you want a breakdown of it. The deposit that we received on November 6th, according to the deposit tickets made out by your bank contained $3,100 in 2's; $2,500 in 5's; $5,000 in 10's; $24,000 in 20's; $20,000 in 100's, for a total of $54,600.

Do you want the other one too?

Q. Yes, just in total.

A. Do you want the 16th also?

Q. Yes.

A. The deposit of the 16th?

Q. Yes.

A. There were $2,500.50 in 1's, apparently the 50¢ being for 2/5th, but less than 3/5th of a bill; 5's $1500; 10's $11,000; 20's $34,000; total deposit $69,000.50.

Q. Does money have to be in as bad a condition as you described this money before it is taken out of circulation?

A. No, sir. This money was in much worse condition than what the average money that is received by us that would be classified as unfit. As I say, it was in deteriorated condition; it was tissue paper thin; it didn't have the sizing or quality that you would normally [28] find in paper currency.

Q. It is part of your Department's job to remove currency that is not considered fit to continue in circulation?

A. This is right, this is a function of our sorting division, to verify any currency deposited with us and remove the unfit from circulation.

Q. Is there some of this unfit money in almost every deposit you receive from your member banks?

A. Generally I would say yes, not necessarily, though —it need not be, it can be fit currency that the bank has accumulated.

Q. Do you know what sort of a time table Commercial Bank generally sends in its deposits on—how many days or weeks elapse on the average?

A. Well, generally commercial banks are tied in with existing armored car runs to where they can utilize their services or they can't. It depends on the cash flow the bank has. Some banks are receiving banks—some banks are depositing banks. It need not be consistent.

Q. So, you don't know particularly about Commercial Bank, how frequently they sent money in to you?

A. Well, the bank here, The Commercial Bank of Middlesboro over the past year sent us 24 deposits—24 deposits during the year 1970, and, therefore, it figures [29] out to about twice a month on the average.

Q. All right.

* * * *

[Testimony of Baldwin Lewis Brutscher]

DIRECT EXAMINATION

BY MR. SNOW:

Q. Sir, please state and spell your last name to the Court.

[30] A. My full name is Baldwin Lewis Brutscher. The spelling of my last name is B-r-u-t-s-c-h-e-r.

Q. And what is your residence address, please sir?

A. 425 Moreed Road, Louisville, Kentucky.

Q. By whom are you employed, Mr. Brutscher?

A. By the Intelligence Division of the Internal Revenue Service of the United States Treasury Department.

Q. How long have you been employed by the Internal Revenue Service?

A. Approximately 11 years.
Q. Have you spent all this time as a Special Agent of Intelligence?
A. Yes, sir, I have.
Q. What generally, sir, then are the duties of an Intelligence Agent?
A. We investigate alleged violations of the tax laws of the United States.
Q. Allegations of fraud, and possible criminal violations, would that be correct?
A. Yes, sir.

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Q. Turning to the particular case, sir, what is the policy of the Internal Revenue Service when they receive a TCR such as Government Exhibit Number 1—to what division is that assigned?
A. I think it initially comes to the Intelligence Division. I'm not positive of that.
Q. What other divisions are there in Internal Revenue?
A. The Audit Division, and Collection Division are the primary other divisions.
Q. Again going to this particular matter, sir, where was your post of duty on April 22, 1971?
A. My post of duty was Louisville, Kentucky, which governs the State of Kentucky.
Q. And you are associated in the present case, sir, against Bisceglia?
A. Yes.

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Q. What years, sir, are involved in the present tax investigation?
A. The year 1970.
Q. This is a rather unusual investigation. Will you explain, sir, what the nature of the investigation is?
A. It is unusual in that we do not know who the taxpayer is.
Q. And why, sir, are you involved in it?

A. The most direct answer is because my chief told me to go.
Q. Why is your chief interested in this case?
A. Because it's an unusual transaction of currency.
Q. What is unusual about the transaction?
A. It's unusual because of the amount and because of the fact the money was apparently in a deteriorated condition.
Q. What possible tax effect could this have on the taxpayer if he is determined?
[33] A. Well, it could be anything from nothing at all, a simple explanation, or it could be that this is money that has been secreted away for a period of time as a means of avoiding the tax.
Q. And upon which tax has not been paid?
A. That's correct, sir.
Q. Then you really have not reached first base yet, is that correct?
A. That's correct.
Q. Before you can continue your investigation you must know who you are investigating?
A. I must.
Q. Now, sir, we have heard about deteriorated bills. We have also heard that prior to the $40,000 of these type of bills submitted by the Commercial Bank to the Federal Reserve Bank that during the ten months previous to 1970 that bank had submitted a total of $21,800 in $100 bills to the Federal Reserve Board. With this knowledge, and with the additional knowledge that $40,000 passed on the 6th and 16th of November, let us take the hypothetical and presume that that money was normal money, in your eleven years as a Special Agent would you still be interested in such a transaction in knowing who the taxpayer, or taxpayers, were?
A. Yes.
[34] Q. Why?
A. Because why this difference all of a sudden—why do they go along at a certain seeming level and all of a sudden it changes—it's just a matter of professional curiosity.

Q. Would the fact that the bank had not submitted any $100 bills on the date previous to November 6th affect your inquiry? Make you more interested?

A. If they had not submitted any in the past—

Q. Why they did not.

A. —and then submitted a great number?

Q. Yes.

A. Yes, it would.

Q. What steps then, sir, have you taken to get the information—that is, the name of the depositor, or depositors, from the Commercial Bank?

A. I went to the Commercial Bank and talked to Mr. Bisceglia and told him what the situation was; that I was attempting to determine who or how many people and what the circumstances were concerning these deposits, and that was my purpose at the Bank.

Q. So, Mr. Bisceglia was most gracious, did he introduce you to any other bank employees?

A. Yes, he did.

Q. And what was the general nature of the [35] conversation and whom whom did you have it—who were those other people?

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A. Of course, the introduction took place. I asked Mrs. Sufferidge—

Q. Who is Mrs. Sufferidge?

A. I think she has the title of Vice President. She is, in effect, what I would normally speak of as the head cashier.

Q. Go ahead.

A. I explained to Mrs. Sufferidge what my mission was at the bank and asked her if she could be of assistance. She said that she could not swear who the person was, or persons—she didn't say.

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Q. Did you make a determination, Mr. Brutscher, as to what periods at the bank, for what period you would

like to examine their records to make a determination as to whom the "John Doe" is?

A. Yes, I asked for a certain period—I asked Mrs. Sufferidge.

Q. Well, let us not get into that. In your own mind, based on your conversations, have you determined in your own mind what period will be necessary for you to go into and examine them?

A. If I need to examine them, yes, sir.

Q. Would that period be October 22 through November 13?

A. Yes, sir.

MR. SNOW: This is the period, Your Honor, that we are talking about.

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Q. Now, Exhibit 2, sir, is that the original of the summons, an attested copy of which you handed to Mr. Bisceglia?

[41] A. Yes, sir.

Q. Now, sir, is it necessary for you to go into those bank records?

A. Is it necessary for me to?

Q. Yes, sir, or can some other arrangement be worked out?

A. Some other arrangement could easily be worked out.

Q. For instance, the Bank could determine this for you and you would have to go through no records?

A. That is correct.

Q. You would accept the Bank's word?

A. I would.

Q. Now, sir, for the record, has a criminal prosecution been recommended against "John Doe," the taxpayer, at this time?

A. No, sir.

MR. SNOW: No further.

THE COURT: Cross examine.

CROSS EXAMINATION

BY MR. WATSON:

Q. Mr. Brutscher, as I understand it, you intended to examine the Bank's records for the period Octo- [42] ber 22 through November 13 in order to pick up the source of these two shipments?

A. No, sir, my intention to look at those records was to assist the bank employees in refreshing their memory as to who brought the money in.

Q. Well, you wanted the records examined during that period, that's what I'm getting at?

A. For that period, yes, sir.

Q. Whether it was to determine it yourself or to help somebody refresh their recollection that 22 day period is the period you were going to have the records checked as an initial proposition?

A. Yes, sir.

Q. And, I assume, if you didn't find what you wanted there you would have probably wanted to expand the examination?

A. If the bank employees indicated to me that there might be a possibility of determining the identity of the person by some other means, yes, sir.

Q. And in order to determine the source of cash, you would either examine deposit tickets for checking and savings accounts, or look at the cash tickets for across the counter cash transactions?

A. I would think the cash tickets would be the fastest way to do it.

[43] Q. If the cash tickets didn't show it then you would go to the deposit tickets?

A. Yes.

Q. For each of those days?

A. For each of them until such time as we established the identity of it.

Q. And if not found during that period then you would expand the period backward, wouldn't you?

A. I would have to arrive at that point to see. I'd say, I doubt it.

Q. Well, you would normally do that if you didn't find what you wanted in that period?

A. I don't know, based on what I was told, that I would go any further.

Q. Do you have any idea how many individual items would have to be examined, cash tickets and deposit tickets, for each day within this period?

A. No, but it would be quite a few, I would imagine.

Q. Were those items on film or were they original cash tickets and deposit tickets still available?

A. The original cash tickets were available I was told. There was microfilm there of deposit tickets. Whether or not the originals were there, I don't know.

Q. Now, you are proceeding here in issuing [44] this summons, are you not, Mr. Brutscher, merely on a suspicion that there might be some tax due on the part of some taxpayer who had some transaction with that bank?

A. I think the answer to that is yes, as I follow that question.

Q. And that suspicion, in turn, is based upon another suspicion that because the bank submitted to the Federal Reserve Bank on the 6th and 16th of November, 1970 shipments containing $20,000 each in $100 bills?

A. Only in relationship to the fact that they were odd, as opposed to their normal course of business.

Q. Odd only in that they were old?

A. No, odd in that they were old and they were odd as to the normal course of business of the bank.

Q. And this information which was related to you by Mr. Weisbrod's office is the basis of your suspicion?

A. The TCR that was prepared, I assume by Mr. Weisbrod's office, initiated the action on my part, yes, sir.

* * * *

[45] THE COURT: Mr. Brutscher, did you attempt to talk to the parties there in the bank who might know who conducted any transaction involving such currency?

A. Did I, sir?

THE COURT: Yes.

A. Yes, sir.

THE COURT: And did they decline to give you any information or did they indicate they didn't know, or did they indicate they would have to examine their records?

A. Mr. Bisceglia indicated that he did not know. Mrs. Sufferidge would not say she didn't know, but her statement on several times was that she could not swear who did it. I asked her if she looked at her records would this help refresh her memory, and she said: "I suppose it would."

THE COURT: All right, anything else.

MR. SNOW: I would like to re-call Mr. Weisbrod for one question, Your Honor, which I neglected to ask him.

[46] THE COURT: All right. All right, you may step down.

The witness, DAVID WEISBROD, having been re-called, and having been previously sworn, testified further, as follows, on

RE-DIRECT EXAMINATION

BY MR. SNOW:

Q. Mr. Weisbrod, I have one question: We have heard testimony there were two shipments received on the 6th and 16th of November comprising $40,000 in $100 bills. Were these two shipments of money—the money involved, in the same deteriorated condition?

A. The money in both shipments was in deteriorated condition and unusual.

Q. Thank you.

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[Testimony of Richard V. Bisceglia]

DIRECT EXAMINATION

BY MR. WATSON:

Q. State your full name, please, sir.

A. Richard V. Bisceglia.

Q. Are you the defendant named in this action being tried here today Mr. Bisceglia?

A. Yes, sir.

Q. How old a man are you?

A. 34.

Q. Where do you reside?

A. 142 Edgewood Road, Middlesboro, Kentucky.

Q. And you are identified in the petition as the Vice President of the Commercial Bank of Middlesboro, Kentucky, is that correct?

A. Yes, sir.

Q. Do you have a more exact title, or is there some addition to your title that's not shown here?

A. Executive Vice President and Trust Officer.

Q. How long have you been with the Commercial Bank?

A. Since August 15, 1959.

Q. What were your duties and what was your title on the 22nd of April, 1971, when you were served with [51] this summons by Agent Brutscher?

A. I was in charge of the loan department.

Q. Did you have the same title otherwise, Vice President, and so forth?

A. Yes.

Q. Now, being in charge of the loan department, what are your duties?

A. Well, I appraise the houses for the mortgage loans, and I'm in charge of the financial statements for customer loans and in charge of the collateral on any loan, and any record pertaining to the loan department.

Q. Do you have access to the other records of the bank?

A. Yes, sir.

Q. Are they primarily under your control other than the ones you have named here?

A. No, sir.

Q. Now, this summons which was served upon you mentions the two shipments of $20,000 each on November 6th and November 16th, 1970 from your bank to the Federal Reserve Bank in Cincinnati. About how frequently, if you know, are money shipments made from your bank to the Federal Reserve Bank?

A. Approximately every two to three weeks.

Q. Who is responsible for making up those [52] shipments in cash?

A. Mrs. Dorothy Sufferidge.

Q. What is her position?

A. Vice President.

Q. You have heard testimony of Agent Brutscher and read the summons in which the Government seeks to determine the identity of persons, or the person, if an individual, who deposited, redeemed, or otherwise gave to Commercial Bank, these two shipments of currency. Do you personally have any knowledge of the identity of the person, or persons, who gave to the Bank these amounts of currency in $100 bills?

A. No, sir.

Q. In order to determine the source of these sums of money—that is, the date on which they were received and the person, or persons, from whom they were received, what records of the Bank would have to be examined to determine this information?

A. Well, you would have to examine the deposit tickets and the cash tickets.

Q. Now, the deposit tickets pertain to both your checking and savings accounts, is that correct?

A. Yes, sir.

Q. Approximately how many checking and how many savings accounts are there at your Bank?

[53] A. Well, the checking accounts would number approximately 3700, and the savings accounts would number around 2900.

Q. About 6,600 accounts for which the deposit tickets would have to be checked on a daily basis during the period described by Agent Brutscher?

A. Yes, sir.

Q. And how are those deposit ticket records maintained for the period in question?

A. Well, the deposit tickets are on film, and the cash tickets are original in a paper folder—brown paper envelope.

Q. The original cash tickets are still in existence?

A. Yes, sir.

Q. How many days transactions are contained on a single roll of microfilm, as far as the deposits?

A. I would say approximately five or six days, maybe.

Q. Do you have a machine at the bank for the purpose of displaying microfilm records?

A. Yes, sir.

Q. About how many cash transactions would occur across the counter in the bank on any average day?

A. The cash tickets would be anywhere from [54] 1250 to 1500 daily.

Q. And about how many deposits per day for all accounts?

A. I would say, approximately 6 to 700.

THE COURT: Excuse me. What do you mean by cash ticket?

A. Well, a cash ticket would be the off-setting slip of paper that the teller, when she has a deposit with strictly cash, she would make out a cash ticket, the end ticket, we call it, to run through the proof machine to balance out the transaction.

THE COURT: Let me ask you this: If I go in the bank with a $100 bill and say I want 10's, there's no record kept of that, is there?

A. No, sir, that's just an exchange.

THE COURT: Suppose I went in with $10,000 in deteriorated currency and say I've got this money I want you to exchange, would you keep any record of that?

A. Well, if it was just an exchange, we would just exchange the money out.

[55] THE COURT: That would be a very unusual transaction, though, wouldn't it?

A. Yes.

THE COURT: All right.

Q. That leads me to my next question, Mr. Bisceglia—

THE COURT: Well, I'm not trying to help you, Mr. Watson.

MR. WATSON: Yes, Your Honor.

THE COURT: I'm trying to learn something.

Q. —is it conceivable that if these records were produced for the period October 22 through November 13 at the rate of approximately 1800 to 2200 deposit tickets and/or cash tickets a day, that the information which Mr. Brutscher seeks might still be indetermined?

MR. SNOW: Objection. That calls for a conclusion of the witness, Your Honor.

THE COURT: Overruled.

[56] Q. Do you understand my question?

A. Would you repeat the question.

THE COURT: Well, Mr. Watson, isn't it implicit in what we've already been through if there was an exchange there wouldn't be a record? Otherwise, there would be.

MR. WATSON: Yes, Your Honor.

THE COURT: All right.

Q. It is possible to check all these records and you still wouldn't know where this money came from?

A. It's possible if it was an exchange.

Q. In order to produce the records which Mr. Brutscher wants, how would the Bank go about it? Who would get him the records?

A. Well, what we would do would be to let him look at the film in our presence.

Q. Just let him run through the microfilm records?

A. That would be the only thing I would know to do.

Q. As to the cash tickets, do the cash tickets show the name of the person on the ticket that received money out of the bank?

[57] A. No, just the amount.

Q. Just the amount?

A. Yes, sir.

Q. Would it show the identity of the teller who handled the particular cash transaction?

A. Yes, sir, it would show either the Number 1 teller, Number 2 or Number 3.

THE COURT: How many tellers do you have in the bank?

A. Let's see, we have 4—5 in the main office, 4 at the East end branch, and 1 at the shopping center branch.

Q. All right, now, your East end branch was open at the time in question, wasn't it?

A. No, sir—you mean, the shopping center branch?

A. No, I'm talking about your East end branch. When did it open?

A. In November of 1963.

Q. Now, the deposit tickets also bear an identifying stamp for tellers, is that correct?

A. Yes, sir.

Q. And any of the transactions which the Government suspicions took place here could have occurred either at your main bank down town, or at your East end [58] branch?

A. Yes, sir.

Q. And could have been handled by any one of 9 tellers?

A. Yes, sir.

Q. Are all of the tellers that were with your bank in 1970 still with the bank?

A. No, sir.

Q. What kind of a turn-over have you had?

A. Well, we—the Number 1 teller in the main office left the bank and went to work at the Social Security office, and the head teller at the East end branch was transferred—her husband was transferred and she left —approximately, maybe two more—between 4 and 5.

Q. In addition to those men or women who regularly work as tellers do other people stand in for them at the windows?

A. I don't follow you.

Q. In other words, are people substituted at the tellers' windows when the regular teller is gone?

A. Yes, sir.

Q. Who might they be?
A. Well, they would be the alternate tellers.
Q. They have regular jobs elsewhere in the [59] bank?
A. Yes, sir.
Q. Are all the bank employees trained to fill in as tellers if necessary?
A. No, sir.
Q. What percentage of them are trained for that purpose?
A. I would say, maybe, forty (40%) percent.
Q. Do they have their own identification stamp, or do they use the stamp that goes with that window?
A. They use whatever stamp is at the window.
Q. Approximately how much time would it require to go through the records that Mr. Brutscher wants to be produced?
A. I would have no idea. It may be hard to say. I don't know what all would be incurred.
Q. The way the cash is received in the bank is there any guarantee that the money which was received on the 6th and 16th of November, 1970 was actually received during the period October 22 to November 13th?
A. I don't know.
Q. Could it have been received prior to October 22 but not sent out until after the—
MR. SNOW: Objection. The witness was asked to answer [60] that question by his previous answer.
THE COURT: Read it back to me, please.

(Reporter reading: "Could it have been received prior to October 22 but not sent out until after the—").

THE COURT: Overruled.
Q. Did you hear the question?
A. Well, I don't know the method of Mrs. Sufferidge sending out the currency.
Q. You are not familiar with that?
A. No, sir.
MR. WATSON: I believe you may ask him.

CROSS EXAMINATION

BY MR. SNOW:

Q. Mr. Bisceglia, you have indicated that you do not know who the depositor, or depositors, were, or who the exchanger was, is that correct?
A. Yes, sir.
Q. Do you know or have any information as to anyone who does have information as to the source of the funds?
A. No, sir.
Q. This case has been pending for some time, [61] have you asked any of the employees down there to look into the matter?
A. No, none other than Mrs. Sufferidge.
Q. Sir?
A. No one other than Mrs. Sufferidge.
Q. And what information, if any, did she give you?
A. Well, she hasn't given me any.
Q. She hasn't responded to your request at this time?
A. Well, she was working with Mr. Brutscher.
Q. Well, sir, you have told us that normally speaking you have two branches, and I understand, 9 tellers, is that correct?
A. Yes, sir.
Q. And, of course, you have records in the bank as to who the tellers were and for what time—that is, for what periods they worked, do you not?
A. Yes, sir.
Q. So you can go back to these records and find out who the tellers were between October 22nd and November 13th, can you not?
A. Yes, sir.
Q. Counsel asked you a question with reference to turning in of $100 bills. We have heard testimony already [62] that prior to November 6th your bank, the two branches, had turned in to the Federal Reserve exactly $21,800, is that right?
A. Well, I don't know.

Q. That's the testimony. The question is, how do you explain, sir, these two shipments of $40,000 within a 10 day period, all of which are the same, and all of which are deteriorated?

MR. WATSON: Object.

Q. Can you explain that?

THE COURT: Well, the objection is sustained to the form of that question.

Q. Do you have any knowledge, sir—let me re-phrase—as to the two particular shipments, and the person I am concerned about—the two $20,000 shipments in $100 bills occurring immediately prior to November 6th and 16th?

A. No, sir.

Q. Has it ever been brought to your attention, sir, that this $40,000 had come into your bank?

A. Well, not to my attention.

Q. To somebody else's attention?

A. Yes, sir, to the operational officer.

[63] Q. And what is his name?

A. Marcum Brogan.

THE COURT: Marcum what, sir?

A. Brogan.

THE COURT: B-r-o-g-a-n?

A. Yes, sir.

Q. And from where did he get his information?

A. I didn't understand the question.

Q. If you know—don't answer if you don't—from where did this gentleman obtain his information?

A. Where did he obtain it?

Q. If you know?

A. I don't follow your question.

Q. Where did this gentleman, sir, get this information with reference to these bills? How did he get it—do you know?

A. I don't know that he got the information.

Q. Was the matter ever discussed with the Board of Directors of the Bank, or the officers of the Bank? It seems rather abnormal.

A. It was brought up after Mr. Brutscher came in, yes, sir.

Q. But not before?

A. No, not to my knowledge.

[64] Q. In other words, the Bank didn't think about it twice the fact that they had received $40,000, until Mr. Brustcher comes in later on in 1971?

A. Yes, sir.

Q. But do you know, sir, contemporaneously with the depositor—these deposits, about this amount—had this been communicated to you?

A. No, sir, not until Mr. Brutscher came in.

Q. Sir, you just told me this other gentleman in your bank had communicated it, isn't that right?

A. No, sir, I must have misunderstood your question. I said he would have been informed if something like that would have been brought up, but to my knowledge nothing was ever brought up.

Q. I'm rather confused, sir. It would seem to me—you are telling the Court, aren't you, that $40,000 comes in in old, deteriorated, "tissue-thin bills" and I quote, and nothing was said to anybody as far as you know?

A. Well, I didn't know anything about it until Mr. Brutscher came in.

Q. Well, sir, how many transactions does that bank have involving $20,000 in $100 bills—how many?

A. I have no knowledge.

Q. Probably none, or close to none, is that [65] correct?

You've been Vice President there for a number of years—

THE COURT: Wait a minute—wait a minute, Mr. Snow. You asked him a question and then you started on another one without letting him answer.

What was the answer to the other question, Mr. Bisceglia?

A. Which question is that?

THE COURT: Read back the one that wasn't answered.

(Reporter reading: "Probably none, or close to none, is that correct?")

THE COURT: What's your answer to that?

A. Well, it would be, on a commercial deposit there may be a few.

MR. SNOW: May I hear that, Madam Reporter. I didn't hear his answer.

(Reporter reading: "Well, it would be, on a commercial deposit there may be a few.")

MR. SNOW: A few?

[66] A. A few in a year's time.

Q. You have been in the banking business, sir, is it your believe that the Federal Reserve is a specialist in these matters? Would you go to them, sir, if you had any questions as to money—counterfeit money?

A. Yes, sir.

Q. Do you have any reason to doubt, sir, this gentleman's word that this money was deteriorated and in an unusual condition?

A. No, sir.

Q. Would not you be curious as to the source of this money—this $40,000.

A. No.

Q. You would not be curious as to this $40,000 even though your bank had only shipped up to that bank $21,800 prior to the end of the year, and then on 2 dates, as part of bigger shipments, to send up $20,000 a piece on the 6th and 16th, all the same, you wouldn't be curious?

A. Well, under my present position I wouldn't have any knowledge of it.

Q. But that is not my question, sir: Wouldn't you be curious, as a bank official, and as a citizen?

MR. WATSON: I'm going to object, Your Honor. I don't [67] think whether he would be curious or not curious is really relevant to this question.

MR. SNOW: I would like to hear the answer, Your Honor.

THE COURT: Well, the objection is sustained as to the form of that question. He says he doesn't handle that part of the bank business.

Q. Did the Special Agent, sir, explain to you that the Internal Revenue Service would cooperate with you in

every respect as far as determining the source of this $40,000?

A. Yes, sir.

Q. Did he further explain to you that they would accept your representation to them as to the source?

A. Yes, sir.

Q. Do you understand, sir, that we would still agree to this method?

A. Yes, sir.

Q. And, of course, sir, in your office you can ask the bank people to make a search of their records and make such a determination, can you not?

A. Yes, sir.

[68] Q. And it may well be that it may turn up right away or it may take a long time, may it not?

A. Yes, sir.

* * * *

SUPREME COURT OF THE UNITED STATES

No. 73-1245

UNITED STATES, ET AL., PETITIONERS

v.

RICHARD V. BISCEGLIA

ORDER ALLOWING CERTIORARI—Filed April 15, 1974

The petition herein for a writ of certiorari to the United States Court of Appeals for the Sixth Circuit is granted.

☆ U. S. GOVERNMENT PRINTING OFFICE: 1974 551309 385